MediaCorp News Pte Ltd & Ors v MediaBanc (Johor Bahru) Sdn Bhd & Ors (Lim Leong Wuoh & Ors, proposed contempt parties)

HIGH COURT (KUALA LUMPUR) — SUIT NO D-22(IP)-763 OF 2007
AZAHAR MOHAMED J
27 APRIL 2010

Civil Procedure — Contempt of court — Burden of proof — Whether beyond reasonable doubt — Aiding and abetting disobedience to injunction — Whether parties knowingly aided and abetted alleged contemnor in commission of contemptuous act

The applicants applied to commit to prison the first and third proposed contempt parties — directors of the first defendant — for contempt in aiding and abetting the defendants in disobeying an injunction. The applicants' case was that the proposed contempt parties had aided and abetted one Ivan Chong ('Ivan') — the assistant country manager of the first defendant — to disobey the injunction. Initially, the applicants had also sought to commit Ivan to prison for contempt. However, they had failed to obtain leave of court due to lack of evidence to show that Ivan had notice of the terms of the injunction.

Held, dismissing the application with costs:

(1) It was incumbent upon the applicants to prove beyond a reasonable doubt that the proposed contempt parties had willfully and/or deliberately disobeyed or disregarded the order of the court (see para 4); *TO Thomas v Asia Fishing Industry Pte Ltd* [1977] 1 MLJ 151 followed; *Re Bramblevale Ltd* [1970] Ch 128 followed.

(2) There was no evidence to prove that the parties had knowingly aided or abetted Ivan in the commission of the contemptuous act. The conduct of the proposed contempt parties fell far short of willfully or deliberately disregarding the order of the court (see para 14).

[Bahasa Malaysia summary

Pemohon-pemohon memohon agar pihak menghina yang dicadangkan pertama dan ketiga, pengarah-pengarah defendan pertama, dikomitkan ke penjara kerana menghina dalam membantu dan bersubahat bersama defendan-defendan dengan tidak mematuhi satu injunksi. Kes pemohon-pemohon adalah pihak-pihak menghina yang dicadangkan telah

membantu dan bersubahat dengan seorang bernama Ivan Chong ('Ivan'), penolong pengurus kawasan defendan pertama, untuk ingkar injunksi tersebut. Pada mulanya, pemohon-pemohon juga cuba mengkomitkan Ivan ke penjara kerana menghina. Walau bagaimanapun, mereka gagal memperoleh kebenaran mahkamah disebabkan kekurangan bukti yang menunjukkan bahawa Ivan mempunyai pengetahuan mengenai terma-terma injunksi tersebut.

Diputuskan, menolak permohonan dengan kos:

(1) Adalah wajib bagi pemohon-pemohon untuk membuktikan melampaui keraguan munasabah bahawa pihak-pihak menghina yang dicadangkan dengan sukarela dan/atau sengaja mengingkari atau tidak mempedulikan perintah mahkamah (lihat perenggan 4); *TO Thomas v Asia Fishing Industry Pte Ltd* [1977] 1 MLJ 151 diikut; *Re Bramblevale Ltd* [1970] Ch 128 diikut.

(2) Tiada sebarang keterangan bagi membuktikan bahawa pihak-pihak dengan sengaja telah membantu atau bersubahat dengan Ivan dalam melakukan perbuatan menghina tersebut. Kelakuan pihak-pihak menghina yang dicadangkan jauh sekali dibuat dengan sukarela dan/atau sengaja tidak mempedulikan perintah mahkamah tersebut (lihat perenggan 14).]

Notes

For cases on burden of proof, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 1761–1762.

Cases referred to

Bramblevale Ltd, Re [1970] Ch 128, CA (folld)

TO Thomas v Asia Fishing Industry Pte Ltd [1977] 1 MLJ 151, FC (folld)

Legislation referred to

Rules of the High Court 1980 O 52 r 2(2)

Celine Chelladurai (Seira Sacha Abu Bakar with her) (Zaid Ibrahim & Co) for the applicants.

Benjamin Thompson (Thompson Associates) for the proposed contempt parties.

Azahar Mohamed J:

[1] Enclosure 24 is the applicants' notice of motion for an order to, inter alia, commit Lim Leong Wuoh and Sum Ai Kin, the first and third proposed contempt parties respectively ('the proposed contempt parties') to prison for

contempt in aiding and abetting the first to the fifth defendants ('the MediaBanc Group'), in disobeying an injunction order dated 27 November 2007.

[2] The first to the fourth applicants form part of the MediaCorp group of companies (the MediaCorp Group) which is the leading media and broadcasting group of companies in Asia and more particularly in Singapore. The MediaBanc Group is an integrated print, radio and television monitoring agencies. The proposed contempt parties are the director of MediaBanc (Johor Bharu) Sdn Bhd ('the first defendant').

[3] I have read in detail the applicants' statement pursuant to O 52 r 2(2) of the Rules of the High Court 1980 ('the RHC'), the applicants' affidavit in support for leave for committal proceedings date 23 July 2009, the notice of motion for orders of committal, the proposed contempt parties' affidavit in reply dated 18 September 2009 and the applicants' affidavit in reply dated 14 October 2009.

[4] In my view the critical issue for determination in this committal proceedings is whether the proposed contempt parties had willfully or deliberately disobeying or disregarding the order of the court.

[5] I should note at once that it is settled law that in order to sustain a conviction in contempt proceedings, the standard of proof required is one beyond a reasonable doubt. Therefore, it is incumbent upon the applicants to prove beyond a reasonable doubt that the person asked to be committed, namely the proposed contempt parties had willfully, deliberately disobeying, or disregarding the order of the court. The authority to support this proposition is to be found in the judgment of Lee Hun Hoe CJ (Borneo) in *TO Thomas v Asia Fishing Industry Pte Ltd* [1977] 1 MLJ 151. There, His Lordship had this to say at p 155 of the report:

> Willfully, disobeying an order of the court constituted contempt. This commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required to do by the process, order or decree of the court: *Miller v Knox*. The contempt must be willful. An order of court must have been contumaciously disregarded. It is no good if it is casual, accidental and unintentional: *Fairclough & Sons v Manchester Ship Canal Co (No 2)*.

[6] Most important of all, in *Re Bramblevale Ltd* [1970] Ch 128 Lord Denning MR said at p 137:

> A contempt of court is an offence of a criminal character.
>
> A man may be sent to prison for it. It must be satisfactorily proved. To use the time honoured phrase, it must be proved beyond reasonable doubt.

A [7] In this very context, it must be emphasised that the charge against the proposed contempt parties is for aiding and abetting the MediaBanc Group in reproducing or copying the news programmes belonging to MediaCorp Group for the proposes of selling or distributing the same in the course of business, notwithstanding the injunction order by:

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(a) selling clips of television news broadcasts headline 'SCDF buys state of the art digital camera to help investigations' aired on 17 March 2009–20 March 2009 at various times on Channel 8, Channel News Asia, amongst others;

C (b) selling clips of television news broadcasts, headlined 'Sports Council calls for tenders to build permanent racing track' aired on 31 March 2009 at various time on the same channels.

[8] It must be kept in mind that according to the applicants, it is one Ivan D Chong who was actively involved in the wrongful and infringing acts of MediaBanc Group. Order for committal was initially sought against him. In fact, he was identified as the fourth proposed contempt party. However, this court did not grant leave to proceed with the committal proceedings against Ivan Chong for the reason that there was no evidence to show he had notice E of each of the terms of the injunction order.

[9] It is therefore clear that the charge against the proposed contempt parties is not for the principal offence of contempt, but instead for aiding and F abetting. This must be emphasised, as the applicants' case seems to be that Ivan Chong is the main perpetrator of the alleged contempt. Ivan Chong was the assistant country manager, whose job was also to oversee the running of the day to day operations of the first defendant.

G **[10]** In view of the above, the question therefore arises whether the proposed contempt parties conspired or directed Ivan Chong to breach the injunction order.

[11] Having read in detail the various affidavits filed by the applicants and H the applicants' statement pursuant to O 52 r 2(2) of the RHC, I did not see any evidence to the effect that the proposed contempt parties had instigated, aided or abetted Ivan Chong or MediaBanc Group to breach the injunction order.

I **[12]** On the contrary, the first proposed contempt party in his affidavit explained that as soon as the injunction order was granted, the first defendant had revised the standard operating procedures ('SOP') to ensure that their operations complied with the said order. To the best knowledge of the first proposed contempt party, those revised SOP were still in force in 2009,

despite the resignation of the first defendant's chief operating officer and country manager in 2008. He added that this was borne out by the fact that between 2007 and March/May 2009, the applicants had no cause to complain about any breach. The first proposed contempt party emphasised the point that as soon as he heard about the applicants' ex parte application to institute committal proceedings, he immediately traveled to the first defendant's office to find the underlying cause of the matter. According to him, the investigation revealed that the deviation in the SOP, which had been arrived at by Ivan Chong, was an unauthorised, but honest, interpretation of the order.

[13] I should mention here that MediaBanc Group, through the first proposed contempt party's affidavit had apologised to the court for this occurrence.

[14] Based on the facts and circumstances of this case, in my view, no evidence was adduced by way of affidavit evidence to prove that the proposed contempt parties knowingly aided or abetted Ivan Chong in the commission of the contemptuous act. Taken as a whole, to my mind, by any standard, the conduct of the proposed contempt parties falls far short of willfully or deliberately disregarding the order of the court.

[15] It is for all these reasons, the applicants' motion for committal against the proposed contempt parties is dismissed with costs.

Application dismissed with costs.

Reported by Andrew Christopher Simon